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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 Empire Level Manufacturing Corp.,
15 a Wisconsin corporation,
Plaintiff,
16
17 v.
18 Toolrich Imp. & Exp. Co., Ltd.,
a Chinese company,
19 Zhejiang Yongkang Shiya Wanxing Tools Factory,
a Chinese company,
20 Wuxi Just Int'l Trading Co., Ltd.,
a Chinese company,
Pro-Starter Tools Co. Ltd.,
21 a Chinese company,
Zhejiang Boda Measure Tools Co., Ltd.,
22 a Chinese company,
Jinhua Shunchi Tools Factory,
23 a/k/a Jinhua Chunyi Tools Co., Ltd.,
a/k/a Jinhua City Shunchi Tools Factory,
24 a Chinese company,
Cixi Ocean Trade Co., Ltd.,
25 a Chinese company, and
Shaoxing Sunway Tools & Hardware Export &
26 Import Co. Ltd.,
a Chinese company,
27
Defendant(s).
28

Case No.: 2:14-cv-00718-GMN-CWH

**ORDER GRANTING EMERGENCY
EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER, SEIZURE ORDER, AND
PRELIMINARY INJUNCTION**

1 Empire Level Manufacturing Corp. (“Empire”), having filed a Complaint against
 2 Defendants Toolrich Imp. & Exp. Co., Ltd., a Chinese company (“Toolrich”), Zhejiang
 3 Yongkang Shiya Wanxing Tools Factory, a Chinese company (“Shiva”), Wuxi Just Int’l
 4 Trading Co., Ltd., a Chinese company, (“Wuxi Just”), Pro-Starter Tools Co. Ltd., a Chinese
 5 company (“Pro-Starter”), Zhejiang Boda Measure Tools Co., Ltd., a Chinese company
 6 (“Boda”), Jinhua Shunchi Tools Factory, a/k/a Jinhua Chunyi Tools Co., Ltd., a/k/a Jinhua City
 7 Shunchi Tools Factory, a Chinese company (“Jinhua”), Cixi Ocean Trade Co., Ltd., a Chinese
 8 company (“Cixi Ocean”), and Shaoxing Sunway Tools & Hardware Export & Import Co. Ltd., a
 9 Chinese company, (“Shaoxing”) (collectively, “Defendants”); and having filed an *ex parte*
 10 Motion for a Temporary Restraining Order, Seizure Order an Preliminary Injunction
 11 (“Motion”); and the Court having considered the arguments contained therein and based on
 12 those papers, the Court finds as follows:

13 1. Empire is likely to succeed in demonstrating that it owns a federally registered
 14 trademark for its Empire level, United States Trademark Registration No. 2,833,616 (“the ‘616
 15 Trademark Registration”) for key portions of the look of such Empire torpedo level, namely, the
 16 appearance of its vial window, as well as common law rights in and to the distinctive trade dress
 17 signifying by the overall appearance of such torpedo level the source of such product. The non-
 18 functional aesthetic elements together with the ‘616 Trademark Registration creates the
 19 distinctive overall appearance and collectively comprise the protectable trademark rights at issue
 20 (collectively, the “Empire Marks”).

21 2. The injury to Empire’s reputation and goodwill resulting from Defendants’
 22 infringement of the Empire Marks is by its very nature irreparable, as Defendants are unlawfully
 23 seeking to capitalize on the reputation and goodwill of Empire.

24 3. The harm to Empire from Defendants’ infringement clearly outweighs the
 25 potential harm to any legitimate interests of Defendants resulting from the issuance of an
 26 injunction.

27 4. Empire has not publicized the requested seizure.

28 5. There is reason to believe that between May 7 and May 8, 2014, Defendants’

1 counterfeit Empire products will be located at:

2 The National Hardware Show

3 Las Vegas Convention Center Hall

4 Booth Numbers: 6625, 540, 325, 748, 601, 511, 5146, and 1501

5 3150 Paradise Road

6 Las Vegas, NV 89109

7 6. Empire has given reasonable notice of the subject application to the United States
8 Attorney for this judicial district.

9 NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

10 A. Defendants, their officers, agents, servants, employees, and attorneys, and all
11 other persons in active concert or participation with one or more of them who receive actual
12 notice of this Order, are hereby temporarily enjoined and restrained, pending a determination of
13 Empire's motion for preliminary injunction, from engaging in the following activities and from
14 assisting or inducing others to engage in the following activities:

15 i. Using any of the Empire Marks or any other trademark that is a colorable
16 imitation of any Empire Mark or confusingly similar thereto in connection with a level;

17 ii. Importing, exporting, distributing, shipping, introducing into commerce,
18 returning, disposing of, purchasing, offering for sale, marketing, selling, soliciting, filling orders
19 for, promoting, or advertising any level embodying the Empire Marks;

20 iii. Passing off, promoting, or selling any products as being produced by or
21 under the supervision or control of Empire when such is not the case; and/or

22 iv. Destroying, altering shipping, secreting, or otherwise making unavailable
23 to the Court, Empire, the United States Marshal or other law enforcement officer, any
24 documents or tangible things concerning the importing, exporting, distribution, shipment,
25 introduction into commerce, return, disposal of, purchase, offer for sale, sale, solicitation, filling
26 of orders for, promotion or advertising of any level product embodying the Element Marks,
27 and/or any documents or tangible things subject to seizure or discovery hereunder or otherwise
28 relevant to this action.

1 B. Within three (3) business days from the date of the issuance of this Order, the
2 United States Marshal, other law enforcement officer, or security officer and persons acting
3 under their supervision (“Enforcement Officer”), in the company of Empire’s counsel, shall
4 seize at the locations identified above or if the booth locations identified above are changed, at
5 such new booth locations identified as being registered to the associated Defendant or
6 Defendants at the National Hardware Show, and impound the following:

7 i. all goods, packaging, containers and advertising material (including
8 circulars, price lists, labels, signs, catalogs, posters, displays, brochures, flyers and promotional
9 items) bearing and/or embodying the Empire Marks, or displaying any Empire products.

10 ii. all business records (including books, records, accounting invoices,
11 purchase orders, computer records and tapes and any other written, visual or auditory
12 information) which document the purchase, distribution, sale or receipt of the documents and
13 things described in paragraph vi(a) above.

14 C. Defendants shall fully cooperate with the United States Marshal or other
15 Enforcement Officer in furtherance of the foregoing duties, including permitting entrance upon
16 Defendants’ premises and permitting discovery and inventory of all documents and things to be
17 seized and impounded and disclosing to an accompanying the United States Marshal or other
18 Enforcement Officer and any persons with him or her, to such places wherein any documents or
19 things to be seized and impounded are kept or stored or may be found including vehicles and
20 conveyances used to store or transport such documents or things.

21 D. The United States Marshal or other Enforcement Officer conducting the seizure
22 as directed herein may use reasonable force as necessary to open doors, drawers, closets, safes,
23 locks and vehicles on the above identified premises and Empire will hold the United States
24 Marshal or other Enforcement Officer harmless for any liability related to the execution of this
25 Order.

26 E. Empire’s attorney shall provide a person capable of determining whether or not
27 an item is covered by the preceding paragraphs and the United States Marshal or other
28 Enforcement Officers shall follow his or her determination in the seizure.

1 F. The United States Marshal or other Enforcement Officer, his or her agent or
2 designee, shall promptly conduct an inventory of all documents and things seized and
3 impounded and shall promptly provide a copy of such inventory to Defendants from whom such
4 documents and things are seized and to Empire or its attorneys, or make the same available for
5 copying.

6 G. Empire's counsel shall be permitted immediately to inspect and copy the
7 documents and things seized pursuant to this Order and to accompany the United States Marshal
8 or other Enforcement Officer, during the searching, seizing and impounding provided for herein,
9 provided Empire's counsel: (a) maintain as confidential all trade secrets or other confidential
10 information of Defendants designated as such by Defendants; and (b) pending the hearing on
11 whether to confirm the seizure, does not disclose Defendant's designated trade secrets or
12 confidential information therein to Empire or any third parties, except with leave of the Court.
13 The term "Empire counsel" shall mean throughout this Order attorneys of record in this matter,
14 as well as paralegal assistants, stenographic and clerical employees working under the direct
15 supervision or control of such counsel.

16 H. The United States Marshal or other Enforcement Officer and persons acting
17 under their supervision are hereby authorized to make repeated seizures of attempted seizures at
18 the location identified in this Order, upon being advised by counsel for Empire that new or
19 additional infringing articles have been located or placed in the possession or under the control
20 of the Defendants or any of them, or of any agents, servants, or employees of Defendants or any
21 of them. All seizures executed pursuant to this Order are to be completed within three (3)
22 business days of the date of this Order.

23 I. Defendants are hereby required to give proof of a correct name, residential
24 address and phone number where they can be reached by the United States Marshal or other
25 Enforcement Officer and that failure to give such correct name, address and phone number may
26 result in contempt of this Court.

27 J. Personal service of a copy of this Order and the Verified Complaint and other
28 papers upon which this Order is based shall be made upon defendants by the United States

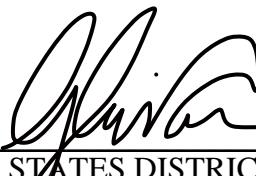
1 Marshal or other Enforcement Officer at the time of any seizure or attempted seizure as
2 provided herein, which shall constitute sufficient service thereof.

3 K. Defendants shall show cause before the Honorable Gloria M. Navarro,
4 United States District Judge, on Tuesday, May 20, 2014 at 10:00 a.m. in
5 Courtroom 7D at the Lloyde D. George United states Federal Courthouse, 333 Las Vegas
6 Boulevard South, Las Vegas, Nevada 89101, or as soon thereafter as the parties may be heard
7 concerning whether the seizure order should be confirmed and why preliminary injunction
8 should not issue pursuant to Fed.R.Civ.P. 65(a), enjoining Defendants pending the final hearing
9 and determination of this action, from such activities as Defendants have today been temporarily
10 restrained from engaging and why such additional and other relief as may be appropriate should
11 not issue.

12 L. The hearings regarding the seizure order and request for preliminary injunction
13 are hereby consolidated in the interest of judicial economy. Separate hearings will
14 unnecessarily duplicate the efforts of the parties and the Court, since the evidence and legal
15 argument for each issue substantially overlap.

16 M. This Order is conditioned upon Empire filing an undertaking in the form of a
17 bond of at least the amount of \$ 10,000.00 to secure the payment of such costs and damages
18 as may be suffered or sustained by a party who is found to have been wrongfully restrained or
19 who's property has been wrongfully seized hereby.

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UNITED STATES DISTRICT JUDGE
DATED: May 8, 2014

1 Respectfully submitted by:
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